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February 24, 2003

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte Presentation*
In the Matter of Performance Measurements and Standards for
Interstate Special Access Services, CC Docket No. 01-321

Dear Ms. Dortch:

On February 24, 2003, the Joint Competitive Industry Group submitted a written ex parte presentation to William Maher regarding the above-referenced docket. Pursuant to the Commission's rules, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gil Strobel', with a long horizontal stroke extending to the right.

Gil Strobel

Attachments

cc: Scott Bergmann
Michelle Carey
Jeffrey Carlisle
Renee Crittendon
William Maher
Uzoma Onyeije
John Stanley

February 24, 2003

BY ELECTRONIC FILING

William Maher
Chief, Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: In the Matter of Performance Measurements and Standards for Interstate
Special Access Services, CC Docket No. 01-321

Dear Mr. Maher:

On December 18, 2002, the Joint Competitive Industry Group (JCIG) filed a letter informing the Commission that the Georgia Public Service Commission (PSC) had issued an order adopting JCIG's proposed measures as part of an ongoing effort to ensure that BellSouth provides adequate service to its customers in Georgia.¹ JCIG now writes to update the record in this proceeding and inform you that the Georgia PSC has issued an Order on Reconsideration upholding its original decision to adopt the JGIC special access measures as benchmarks for assessing BellSouth's performance.² A copy of the Georgia PSC's Order on Reconsideration is attached for your convenience.

¹ See Letter to William Maher, FCC from JCIG, CC Docket No. 01-321, attaching the Georgia Order (December 18, 2002).

² See *Performance Measures for Telecommunications Interconnections, Unbundling and Resale*, Order on Reconsideration, Georgia PSC Docket No. 7892-U, at 5-6 (Dec. 17, 2002).

JCIG continues to urge the FCC to adopt the Group's proposal as expeditiously as possible. As JCIG has previously explained, adoption of the JCIG measurements is the best way to ensure that incumbent LECs provide their special access customers with just, reasonable and nondiscriminatory service.

Respectfully submitted,

The Joint Competitive Industry Group

C. Douglas Jarrett
Keller and Heckman LLP
American Petroleum Institute

Brian Moir
Moir & Hardman
**eCommerce & Telecommunications Users
Group (eTUG)**

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H. Russell Frisby, Jr., President
**Competitive Telecommunications
Association**

R. Gerard Salemme
Senior Vice President, External Affairs
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Attachment

DOCKET NO. 7892-U

**In Re: Performance Measures for Telecommunications Interconnection,
Unbundling and Resale**

ORDER ON RECONSIDERATION

This matter comes before the Georgia Public Service Commission (Commission) on the Motions for Reconsideration and Clarification filed separately by BellSouth Telecommunications, Inc. (BellSouth) and the CLEC Coalition¹ as well as the Petition for Reconsideration filed by Birch Telecom of the South, Inc. (Birch). The Commission issued its Order Adopting Changes to Performance Measures on November 14, 2002 (November 2002 Order).

I. BACKGROUND

On January 16, 2001, the Commission issued its Order Establishing Generic Performance Measurements for BellSouth for Interconnection, Unbundling and Resale to Establish Appropriate Enforcement Mechanisms for those Performance Measurements (January 2001 Order). This order not only established service quality measurements (SQMs) for BellSouth, but it also provided for periodic review of the SQMs. (January 2001 Order, pp. 29-30). On August 24, 2001, the Commission issued a Procedural and Scheduling Order providing for two rounds of written comments from the parties on proposed SQM revisions and workshops to discuss the proposed revisions.

After receiving comments from the parties and conducting workshops, the Staff recommended SQM revisions to the Commission. At its July 2, 2002, Administrative Session, the Commission adopted Staff's recommendations. The Commission issued its order on November 14, 2002. The Commission issued its orders in this docket pursuant to its general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21, and 46-2-23. Under the Federal Telecommunications Act of 1996 (Federal Act), state commissions are also authorized to set terms and conditions for interconnection and access to unbundled elements pursuant to Sections 251 and 252 of the Federal Act.

¹ The CLEC Coalition consists of AT&T Communications of the Southern State, LLC, DIECA Communications, Inc. d/b/a Covad Communications, Inc., ITC^Deltacom, Inc. and Worldcom, Inc.

On December 5, 2002, BellSouth, the CLEC Coalition and Birch separately filed with the Commission requesting reconsideration of specific issues from the November 2002 Order.

II. DISCUSSION

A. *BellSouth's Motion for Reconsideration and Clarification.*

BellSouth sought reconsideration related to a number of the different SQMs ordered by the Commission. Each of these grounds will be addressed in this order.

1. UNE-P Flow Through For Measures 0-3 (Percent Flow-Through Service Requests (Summary)) & 0-4 (Percent Flow-Through Service Requests (Detail))

In its November 2002 Order, the Commission modified the benchmark for UNE-P flow through from 85 % to 95%. BellSouth argues that this jump is too dramatic, and that it is unrealistic to expect BellSouth to meet the new benchmark. BellSouth contends that while it is committed to improving its performance in this area, it is likely that its improvement will eventually stabilize. (BellSouth Motion, p. 3). BellSouth concludes that it is unlikely that BellSouth will reach the 95% benchmark for the foreseeable future. *Id.* at 4.

The purpose behind setting the benchmark is to find a level that will provide BellSouth with the proper incentive for improving its performance. In its Motion, BellSouth lists its performance for UNE-P flow through over the six months between April and September, 2002. (BellSouth Motion, p. 4). The performance suggests that BellSouth will need to improve its performance significantly in order to meet the new benchmark. However, that need for improvement is not evidence that the new benchmark is too ambitious. To the contrary, a goal of establishing benchmarks is to provide BellSouth with adequate incentive to improve. In its Motion, BellSouth takes an average of its last six months' performance and states that it barely exceeds the benchmark from the January 2001 Order. *Id.* This average only shows how BellSouth has performed against an 85% benchmark; it does not reveal how BellSouth will perform against the new benchmark. With any benchmark, there will be arguments that the arrived upon percentage is too low or too high. The Commission is satisfied that the 95% benchmark is fair and will provide the proper incentive.

BellSouth also raises a procedural issue that the Commission needed to hold a hearing prior to adjusting the UNE-P flow through benchmark. BellSouth argues that the modification is not supported by any evidence, and therefore does not comply with O.C.G.A. § 50-13-19(h). It is undisputed that the Commission did not hold a hearing prior to its November 2002 Order. However, the Commission's January 2001 Order established a procedure in which modifications to the SQM would be made following Staff review. (January 2001 Order, pp. 29-30). Specifically, the order states as follows:

8 months after the date of a Commission order and every 6 months thereafter, the Commission Staff shall conduct a review of the measurements, benchmarks and analogs applicable to the performance of BellSouth. This review shall be for the

purpose of modifying the SQMs and applicable analogs and benchmarks as deemed necessary by the Commission.

(January 2002 Order, p. 29).

This paragraph makes clear that the Commission intended to revisit the SQMs through the process of Staff review, rather than hearings. Considering the scheduled intervals of six months for the reviews, it is not a reasonable interpretation of the order that the Commission intended to hold full-blown evidentiary hearings each time the SQMs were to be modified. The order continues to state the following:

The Commission Staff shall prepare a recommendation as to appropriate action to be taken by the Commission, if any, in connection with the review and shall submit this recommendation to the Commission for formal review and adoption.

(January 2001 Order, p. 30).

This paragraph illustrates the Commission's intent to adopt changes based on the Staff's recommendation, rather than a full hearing. The Commission's November 2002 Order merely carried out the procedure set forth in the Commission's previous order.

The Commission issued a Procedural and Scheduling Order on August 24, 2001 scheduling the deadlines for written comments and the dates upon which the workshops would be held. The Scheduling Order states as follows:

The Commission directed BellSouth, the CLEC Coalition, and any other interested parties to file proposed revisions one month prior to the beginning of each review period. The parties will then have an opportunity to comment on the changes proposed by other parties, along with any additional changes they would like to submit. After considering the input from the parties, the Commission Staff will make a recommendation to the Commission.

(Scheduling Order, p. 1).

This order makes clear that the changes to the SQMs would occur after an informal process. Neither BellSouth, nor any other party, objected to proceeding in the manner set forth in either of the two Commission orders discussed above. It would be unfair at this late stage to undo the determinations that resulted from the less formal way of proceeding. All of the parties should have been proceeding with the same understanding. The Commission disagrees with BellSouth's argument that it was obligated to hold a hearing in this instance. However, the Commission recognizes the benefit on a prospective basis of allowing parties the opportunity for a hearing prior to modifications to the SQMs are made in such a way that would impact a party's rights, duties or privileges. Parties shall have the opportunity for a hearing upon request in future SQM reviews prior to the Commission taking such an action.

2. Special Access Measures

The November 2002 Order adopted special access measures filed with the FCC by the Joint Competitive Industry Group (JCIG) in January 2002. Penalties are not associated with the measures adopted by the Commission. BellSouth's performance will merely be compared to the benchmarks in the Commission order.

BellSouth raises three grounds for reconsideration. First, BellSouth states that the Commission should adopt the measures agreed upon by the industry in Tennessee. BellSouth argues that "[t]he Commission should not reject industry consensus or else the industry will have little incentive to reach agreement on other issues in the future." (BellSouth Motion, p. 8). The Commission does not find this argument persuasive. First, that the Commission does not rubberstamp every proposal upon which the industry has reached agreement does not negate the importance of seeking a consensus. From a practical perspective, that a proposal is not opposed by other industry participants will increase that proposal's likelihood of success. The incentive to negotiate in good faith will survive this Commission decision. Second, the Commission cannot meet its obligation to the public if it is expected to adopt any proposal agreed upon by the industry, regardless of whether in its expertise it finds the proposal to represent sound policy making. As to the argument that it makes more sense to adopt similar metrics to those that have already been approved in Tennessee, such a position ignores that state commissions may disagree. If this Commission finds that the inclusion of benchmarks would make the analysis of special access measures more useful, then it should not be compelled to adopt less useful metrics solely for the purpose of consistency.

BellSouth's second argument is that the Commission does not have a factual basis to reach its decision. This argument was addressed in the discussion of BellSouth's motion regarding the UNE-P. For the reasons, stated in that analysis, the Commission concludes that a hearing was not required prior to reaching this determination, but will provide the opportunity for hearings upon request on a prospective basis when the rights, privileges and duties of parties are impacted by a decision of the Commission in its periodic SQM reviews.

BellSouth's final argument with respect to special access is that the Commission does not have the jurisdiction over interstate services pursuant to sections of the Federal Act that it has not been charged to apply or enforce. (BellSouth Motion, p. 10). First, the November 2002 Order does not assess penalties. Rather, the order merely establishes benchmarks for diagnostic purposes. BellSouth acknowledges in its Motion that it would have agreed to the implementation of the metrics adopted by the Tennessee Commission. *Id.* at 7. Its disagreement with the Commission adopting different metrics is noted; however, it does not explain how this Commission exerted jurisdiction in a way that the Tennessee Commission did not.

Second, BellSouth discusses the FCC's Notice of Proposed Rulemaking, *In re: Performance Measurements and Standards for Interstate Special Access Service*, CC Docket No. 01-321, FCC 01-339 (Nov. 19, 2001) (NPRM). BellSouth relies on the NPRM to support its conclusion that the Commission exceeded its authority. (BellSouth Motion, pp. 9-11). While the NPRM seeks comment on the proper role for states with respect to special access services, it

does not reach any conclusion. Those state commission decisions mentioned in the NPRM that concluded state commissions lack the authority to regulate special access services do not have any bearing on the decision of the Commission in this docket. As a preliminary matter, the Commission is not bound by the decisions of other state commissions. Also, the discussion indicates that the other state commissions were asked to resolve disputes pertaining to special access services. This Commission merely set benchmarks without associated penalties. Finally, the NPRM expressly asked parties to comment on the appropriate role for states. (NPRM, 11). It does not make sense that such a request would be included in the NPRM if the FCC had already determined that the role of the states was to be so inconsequential that it could not even collect information for diagnostic purposes.

BellSouth also requests that in the alternative, the Commission stay the implementation of any special access measures until after the FCC makes its rulemaking. (BellSouth Motion, p. 11). The Commission does not see any reason to stay the implementation of this decision. First, nothing in the NPRM indicates that the FCC is likely to find that the Commission cannot even gather information and implement benchmarks solely for diagnostic purposes. Second, if the FCC were to preempt this decision of the Commission, then the Commission could take whatever necessary action at that time.

The Commission denies this ground for reconsideration.

3. Change Management Measures

BellSouth requests that the Commission modify some of the change management measures to eliminate references to time intervals that no longer apply under the Change Control Process (CCP). For CM-3 and CM-4, BellSouth requested that the reference to 30 days be eliminated. As part of its Motion, BellSouth asked that the Commission clarify that language be clarified to exclude “documentation for release dates that is not provided on time for reasons beyond BellSouth’s control.” (BellSouth Motion, p. 12). The Commission finds this request reasonable. BellSouth next requested that the Commission substitute the words “on time” for the reference to the 30-day interval in the exclusion under CM-1 and in the self-effectuating enforcement mechanism (SEEM) analog/benchmark under CM-3. The Commission finds this request reasonable as well.

BellSouth also requested that the Commission modify its order to recognize the manner in which expedites are currently handled under the CCP. (BellSouth Motion, p. 12). BellSouth requested that the language in metrics CM-1, CM-2, CM-3 and CM-4 be modified to exclude “Type 6 Change Requests and all Expedites as defined by the Change Control Process.” *Id.* The Commission finds this request reasonable.

BellSouth also requested that the Commission clarify that the calculation of measure CM-6 (Percent of Software Errors Corrected in x business days) includes only those software errors that have been corrected within the reporting period. (BellSouth Motion, p. 13). The Commission denies this request for reconsideration. The Commission’s intent was to fine BellSouth for each month that it was not in compliance in order to provide the necessary incentive for BellSouth to correct the defect as soon as possible.

BellSouth also sought clarification of the Commission's decision related to CM-11 (Percent of Change Requests Implemented Within 60 Weeks of Prioritization). BellSouth sought to clarify that the 60 week clock "begins when the CLECs first prioritize change requests after the implementation date of the Commission's November 14 Order." (BellSouth Motion, p. 15). Also, BellSouth requested that the Commission clarify that the 60 week clock "starts over when change requests that have been prioritized are subsequently reprioritized by the CLECs." *Id.* The Commission denies both of these requests for clarification. BellSouth is obligated to implement changes within 60 weeks, and the Commission is not persuaded that requests for prioritization should alter that responsibility.

4. Issues Raised by BearingPoint As Part Of The Georgia Third-Party Test

BellSouth raised two issues on reconsideration related to the third-party test conducted by BearingPoint. First, BellSouth requested that the Commission clarify its November 2002 Order "to require that BellSouth modify the SEEM disaggregation levels under Measure OSS-1 consistent with the Commission's prior orders." (BellSouth Motion, p. 18). The Commission finds BellSouth's position reasonable and grants its request. Second, BellSouth requested that the Commission clarify that "disconnect orders should be excluded from the affected provisioning measures, regardless of the type of order used to effectuate the disconnection." *Id.* at 19. The Commission agrees. The current disconnect exclusion language in measures P-1, P-2A, P-2B, P-3, P-4, P-5, P-6, P-9 and P-11 are hereby removed and substituted with "Disconnect Orders."

5. SQM Plan

BellSouth requested that the Commission clarify that the SQM document attached to the November 2002 Order does not reflect all of the changes ordered by the Commission and to direct BellSouth to file an updated SQM plan that incorporates all of the Commission's decisions, including the issues upon which reconsideration or clarification is granted. (BellSouth Motion, p. 19). The Commission grants this request. BellSouth shall file updated SQM and CCP documents.

6. P-11 (Service Order Accuracy) Penalty

BellSouth requested that the Commission clarify its November 2002 Order as it relates to the Staff's recommendation that the Commission fine BellSouth \$100,000 for making changes to the P-11 SQM. (BellSouth Motion, p. 20). This issue was addressed in the Consent Order approved by the Commission as part of this docket in its December 18, 2002 Administrative Session. The terms and conditions of the Consent Order take precedence over the fine stated in the Commission's November 2002 Order.

7. The Effective Date of the Order

The November 2002 Order states that it will become effective "90 days from the date of a Commission Order approving the revised SQM." (November 2002 Order, p. 5). Ninety days

from November 14, 2002 is February 12, 2003. Since BellSouth's systems are not set up to commence changes to the calculation and reporting of performance results in the middle of the month, BellSouth requested that the Commission clarify that the order will take effect on March 1, 2003. (BellSouth Motion, p. 20). The Commission grants this request.

8. Change Control Process

BellSouth requested that the Commission clarify certain aspects of its November 2002 Order relating to changes in the Change Control Process (CCP). First, BellSouth points out an inconsistency in references to Appendix I-A, and asks that the Commission clarify its order by substituting "Revised Appendix I-A" where references to "Appendix I-A" appear. (BellSouth Motion, p. 21). The Commission grants this request.

BellSouth also requests that the Commission clarify the requirement that BellSouth provide information concerning "full release capacity." (November 2002 Order, p. 9). BellSouth argues that since the Revised Appendix I-A sets forth "estimated release capacity" the Commission should clarify its order to make clear that the release capacity information BellSouth must provide are only estimates. (BellSouth Motion, p. 21). The Commission grants BellSouth's request.

BellSouth also requests that the Commission clarify that BellSouth should not be obligated to provide capacity information for *all* future releases. The Commission agrees, and deletes the word "all" from before capacity release. In addressing BellSouth's next request for clarification, the Commission clarifies how far into the future BellSouth must forecast.

The next BellSouth request for clarification related to the time period for which estimated release capacity information must be provided. The November 2002 Order is inconsistent in that Item 16 under Section S lists a twelve-month period, while Item 43 under Section S lists a two-year period. BellSouth states that a one-year period is appropriate for providing estimated release capacity information should be one year. (BellSouth Motion, p. 22). The Commission, upon reconsideration, finds that the proper time period should be 60 weeks (14 months).

BellSouth also asks that the Commission eliminate the requirement that BellSouth assign Candidate Change Requests to future releases. BellSouth argues that the change requests cannot be so assigned until after sharing the CLECs' list of prioritized change requests with its IT department and scoped out the work involved in implementing each release. The Commission denies this request for clarification. BellSouth did not adequately support its request to change from the current document.

B. CLEC Coalition Motion for Reconsideration/Clarification

BellSouth sought reconsideration related to a number of the different SQMs ordered by the Commission. Each of these grounds will be addressed in this order.

1. Late and Incomplete Reports

The CLEC Coalition requested that the Commission reconsider omitting the requirement that BellSouth pay remedies for revised reports. The CLEC Coalition argued that obligating BellSouth to pay penalties for failure to submit accurate and timely reports was fair given that CLECs rely upon the reports to determine if BellSouth is providing service at parity to CLEC customers. (CLEC Coalition Motion, p. 3).

The Commission finds that the penalties sought by the CLEC Coalition are not necessary. In 2001, the Commission approved several new measures and disaggregated hundreds of others. BearingPoint is in the process of auditing the measures to ensure that it can replicate BellSouth's SQM for three consecutive months. The Commission finds that the audit process is sufficient incentive in this instance for BellSouth to accurately report its performance. The Commission denies reconsideration on this ground.

2. O-8 (Reject Interval) and O-9 (Firm Order Confirmation)

The CLEC Coalition requested that the Commission reconsider its decision to adopt an interval of 95% within 24 hours for non-mechanized Local Service Requests (LSRs). The CLEC Coalition argues that given that BellSouth excludes weekend, holiday and 14 hours out of each 24 hour business day from the reject and firm order confirmation intervals, that the actual interval is longer than intended by the Commission. (CLEC Motion, p. 8).

The Commission was aware of the actual interval time when it reached its decision. Therefore, reconsideration on the basis of there being some misunderstanding as to the effect of the Commission decision is not necessary. Given that in most cases CLECs should have the opportunity to order using mechanized, or partially mechanized, LSRs, the Commission found it reasonable to set an interval that in comparison to some of the other measures adopted in its November 2002 Order may be viewed as slightly less stringent.

Moreover, the Commission's determination on this issue is part of a balancing aimed at setting ambitious but realistic performance goals for BellSouth. As the ultimate decision is subjective, parties may differ as to whether the determined benchmark achieves the aforementioned goal. The Commission continues to believe that the interval set in its November 2002 Order is fair and should provide BellSouth with the proper incentives.

3. O-16 (CLEC Ordering Trouble Responses in 48 Hours)

The CLEC Coalition asked that the Commission reconsider its decision to omit the O-16 SQM. The CLEC Coalition argues that this SQM is necessary to ensure that BellSouth addresses their ordering issues promptly. (CLEC Coalition Motion, p. 8). As an alternative, the CLEC Coalition argues that the Commission should adopt BellSouth's previously proposed O-16 measure. Id. at 9.

The Commission denies reconsideration of this issue. The Commission stands by its earlier conclusion that the O-16 measure is poorly defined, would be difficult to measure and is not responsive to any clearly demonstrated problem.

4. P-4 (Average Completion Interval & Order Completion Interval)

The CLEC Coalition requested that the Commission change the start time for its P-4A to the time of BellSouth's receipt of a valid LSR. The CLEC Coalition argues that this would allow the measure to compare the same order completion interval for BellSouth customers as it does for CLEC customers. (CLEC Coalition Motion, p. 10). The Commission denies reconsideration on this ground. The CLEC Coalition argument ignores that there is no retail equivalent for the firm order confirmation (FOC) time. If the FOC time were not excluded, then the measure would be extremely difficult for BellSouth to meet.

5. P-11

The Commission's decision on P-11 will be set forth in the context of its decision on the Birch Petition.

6. P-15 Premature Disconnect – Loop Port Combos

The CLEC Coalition requested that the Commission reconsider its decision to delete this SQM. The P-15 SQM measured the percentage of premature disconnects of UNE-P conversions associated with the two order process. BellSouth argued that the measure was obsolete because it had implemented a "single C" ordering capability. (BellSouth Comments, August 16, 2002, p. 25). The Commission Staff agreed with BellSouth's position. (November 2002 Order, p. 4). However, the CLEC Coalition asserts that BellSouth has only partially implemented its single order process. (CLEC Coalition Motion, p. 11). In the alternative, the CLEC Coalition requested that the Commission should require BellSouth to fully implement the October 19, 2001 order of the Commission in Docket No. 6863-U.

The Commission denies reconsideration on this issue. The CLEC Coalition did not provide an adequate basis for modifying its decision. Since the Commission will periodically revisit the SQMs, more information on this issue may be available for the Commission to review at that time.

7. P-13 B (Percentage of Time BellSouth applies the 10-digit Trigger Prior to the LNP Order Due Date) and P-13 C (Percent Out of Service < 60 minutes)

The CLEC Coalition requested that the Commission clarify that the standard should be "greater than" for both measures in the SQM and the SEEM. Currently, both measures have a "<" symbol, which indicates "less than." The Commission agrees and grants the request for clarification on this issue.

8. CM-6 (Percent of Software Errors Corrected in X (10, 30, 45) Business Days

The CLEC Coalition requested that the Commission direct BellSouth to include, for diagnostic purposes, errors in the calculation CM-6 validated prior to August 1, 2002. The CLEC Coalition argued that excluding such defects would provide an inappropriate incentive to defer the timely correction of such defects in favor of defects validated after August 1, 2002. (CLEC Coalition Motion, pp. 13-14). The CLEC Coalition also requested that the Commission order BellSouth to count the defects validated prior to August 1, 2002 as having been validated on that date. The Commission agrees and grants reconsideration on this issue.

9. CM-11 (Percent of Change requests Implemented Within 60 weeks of Prioritization)

The CLEC Coalition requested that the Commission clarify that BellSouth must report the CM-11 measure for diagnostic purposes beginning with the next release. The Commission agrees and clarifies the November 2002 Order accordingly.

10. CLEC Affecting Change Requests

The CLEC Coalition requested that the Commission clarify that its November 2002 Order intended for CLECs to obtain prior notice of change requests that BellSouth considers not to be CLEC affecting. The November 2002 Order states “CLECs will obtain prior notice through the CCP of all CRs, including BellSouth initiated CRs, before prioritization and implementation in all production releases.” (Order, p. 7) (emphasis added). The Commission denies the motion to clarify on this issue because the November 2002 Order is sufficiently clear that all change requests includes those that BellSouth considers not to be CLEC affecting. The Order states that the prior notification applies to all change requests. Any attempt to make such language more clear is unnecessary and potentially injects confusion where no reasonable confusion previously should have existed.

C. *Birch Telecom of the South Petition*

Birch’s petition requested that the Commission reconsider its modifications to the P-11 SQM (Service Order Accuracy). First, Birch requested that the Commission approve a 95% benchmark for P-11. (Birch Petition, pp. 2-5). This percentage is consistent with BellSouth’s January 25, 2002 letter. The benchmark for the P-11 measurement shall be 95%. Next, Birch asked that the Commission add P-11 to the Tier 1 penalties of the SEEM plan. Birch explained that the modifications to the P-11 SQM should result in CLEC-impacting errors being remedied. *Id.* at 5. The Commission modifies its November 2002 Order to add Tier 1 penalties to the SEEM for this measure.

Finally, Birch requested that the Commission modify the November 2002 Order as it relates to the fields to which the P-11 SQM will apply. Birch attached to its Petition an email from BellSouth counsel outlining the fields agreed to by the parties. (Birch Petition, Exhibit B). Birch requested that the Commission amend its November 2002 Order to include the agreed upon fields. *Id.* at 6. The Commission finds that the fields captured in the measurement shall be those shown in Exhibit B of Birch’s motion.

WHEREFORE IT IS ORDERED, that on a prospective basis parties shall have the opportunity for a hearing prior to the Commission ordering modifications to the SQMs in such a manner that would impact a party's rights, duties or privileges.

ORDERED FURTHER, that the November 2002 Order is modified to eliminate the exclusion under CM-3 and CM-4 for "documentation for release dates that slip less than 30 days for reasons outside BellSouth control." The November 2002 Order is further modified to include under CM-3 and CM-4 an exclusion for "documentation for release dates that is not provided on time for reasons beyond BellSouth's control."

ORDERED FURTHER, that the November 2002 Order is modified to eliminate the reference to the 30-day interval in the exclusion under CM-1 and in the SEEM analog/benchmark under CM-3. This reference shall be replaced with the words "on time," consistent with the other change management measures.

ORDERED FURTHER, that for the "Type 6 Change Requests (Defects/Expedites) as defined by the Change Control Process" exclusion contained in CM-1, CM-2, CM-3 and CM-4, the November 2002 Order is clarified to exclude "Type 6 Change Requests and all Expedites as defined by the Change Control Process."

ORDERED FURTHER, that the disaggregation levels for measure OSS-1 are hereby modified to be consistent with the Commission's prior orders which established SEEM disaggregation based on BellSouth's electronic interfaces, LENS and TAG.

ORDERED FURTHER, that for measures P-1, P-2A, P-2B, P-3, P-4, P-5, P-6, P-9, and P-11, the current disconnect exclusion language shall be removed and substituted with "Disconnect Orders."

ORDERED FURTHER, that BellSouth shall file updated SQM and CCP documents that incorporate all of the Commission's decisions, including the issues upon which reconsideration or clarification is granted. The updated SQM and CCP documents shall be subject to CLEC comments regarding the documents' accuracy.

ORDERED FURTHER, that the fine associated with changes to the P-11 SQM has been addressed in the context of the December 18, 2002 Consent Order. The terms of the Consent Order will take precedence over the November 2002 Order as it relates to this specific issue.

ORDERED FURTHER, that the effective date of the November 2002 Order shall be March 1, 2003, which is the first full month following 90 days from the date the order was issued.

ORDERED FURTHER, that the references in the November 2002 Order to “Appendix I-A” should be clarified to reflect “Revised Appendix I-A” in all instances.

ORDERED FURTHER, that the November 2002 Order is clarified to indicate that the release capacity information that BellSouth must provide are estimates.

ORDERED FURTHER, that the word “all” is removed from Item 14 in Section S which reads, “Provide BST Preliminary Feature Sizing Model and scope information on each Pending change request and all future releases to CLECs.”

ORDERED FURTHER, that for P-13 and P-13 C, the benchmarks in the SQM and SEEM should be clarified to reflect "greater than" for both measures.

ORDERED FURTHER, that for CM-6, BellSouth shall include all errors in the calculation of CM-6, including errors validated prior to August 1, 2002, for diagnostic purposes. Errors validated prior to August 1, 2002, shall be deemed validated for reporting purposes as of August 1, 2002. Penalties shall become effective on the effective date of the November 2002 Order.

ORDERED FURTHER, that for CM-11, penalties shall be due 60 weeks after the next prioritization after the effective date of the November 2002 Order. The 60-week clock will not start over with reprioritization.

ORDERED FURTHER, the benchmark for P-11 shall be 95%.

ORDERED FURTHER, that Tier 1 penalties shall be added to the SEEM for the P-11 measure.

ORDERED FURTHER, that the fields captured in the P-11 SQM shall be those set forth in Exhibit B of Birch’s Petition.

ORDERED FURTHER, that all grounds for reconsideration not expressly granted are hereby denied.

ORDERED FURTHER, that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

ORDERED FURTHER, that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 17th day of December, 2002.

Reece McAlister
Executive Secretary

Robert B. Baker, Jr.
Chairman

Date

Date